

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARRY D. SHREVE and U.S. POSTAL SERVICE,
POST OFFICE, Clarksburg, WV

*Docket No. 03-294; Submitted on the Record;
Issued March 4, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's claim for further review of the merits of his claim under 5 U.S.C. § 8128(a).

On February 24, 1994 appellant, then a 44-year-old area maintenance technician, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that, on that date, when pushing down on a bar to move a scissor lift onto a truck, he sustained an injury to his left arm. Appellant's claim was accepted for left shoulder strain, cervical disc syndrome and anterior cervical discectomy and fusion.

By decision dated October 29, 1997, the Office noted that appellant had been reemployed as a maintenance support clerk with the employing establishment, that this position had been approved by his physician, and that, therefore, this position represented appellant's wage-earning capacity. The Office further noted that as the wages of this job exceeded those of his date of injury job, he was not entitled to wage-loss compensation. Appellant requested a hearing, which was held on September 9, 1998. By decision dated November 23, 1998, the hearing representative affirmed the Office's October 29, 1997 decision, and returned the case to the Office for a determination on whether appellant was entitled to a schedule award and a determination as to whether appellant's low back condition was related to his February 24, 1994 injury.

On February 29, 2000 appellant filed a notice of recurrence of the February 24, 1994 injury (Form CA-2). He noted that he had ongoing pain in his left shoulder and arm, numbness in his left hand and pain in his lower back and legs. By decision dated July 14, 2000, the Office found that the evidence failed to establish that the claimed recurrence and low back condition were causally related to the injury of February 24, 1994. The Office further found that the evidence failed to establish that appellant had a permanent impairment to his left extremity as a result of the February 24, 1994 injury. Accordingly, appellant's claim for recurrence was denied.

Appellant requested a hearing which was held on January 23, 2001. By decision dated May 15, 2001, the hearing representative affirmed the Office's July 14, 2000 decision.

By letter dated June 21, 2001, appellant requested reconsideration. In support of his request, appellant submitted, *inter alia*, a June 5, 2001 medical report by Dr. J. William Bookwalter, III, a Board-certified neurosurgeon, wherein he indicated that appellant was limited to sedentary-duty work six hours per day. He also stated: "It is also my opinion that his current condition is a result of a recurrence of his previous symptoms, which were precipitated by an aggravation of symptoms at work." By decision dated September 20, 2001, the Office denied modification of its earlier decision.

By letter dated April 18, 2002, appellant, through his attorney, asked for a decision with regard to his request for reconsideration. In this letter, appellant's attorney asked if the Office had received Dr. Bookwalter's report dated June 5, 2001. The Office treated this letter as a new request for reconsideration. By letter dated July 2, 2002, the Office informed appellant's attorney that it had not received Dr. Bookwalter's report of June 5, 2001, and asked that he fax a copy to the Office, and appellant's attorney did so.

By decision dated July 19, 2002, the Office denied merit review for the reason that the evidence submitted, *i.e.*, Dr. Bookwalter's report of June 5, 2001, was repetitious in nature and is insufficient to warrant merit review of the prior decision.

With respect to the Board's jurisdiction to review final decisions of the Office, it is well established that an appeal must be filed no later than one year from the date of the Office's final decision.¹ As appellant filed his appeal on November 8, 2002, the only decision over which the Board has jurisdiction on this appeal is the July 19, 2002 decision denying his request for reconsideration.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for further review on the merits.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

In the instant case, although the Office told appellant's attorney in its July 2, 2002 letter that it had not received Dr. Bookwalter's June 5, 2001 report, it had in fact already received this

¹ See 20 C.F.R. § 501.3(d).

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

document and considered it in its decision of September 20, 2001. Material that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.⁴ Appellant submitted no further relevant evidence, nor did appellant show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Accordingly, the Office properly denied merit review.

The decision of the Office of Workers' Compensation Programs dated July 19, 2002 is hereby affirmed.

Dated, Washington, DC
March 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).